IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/10/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mrs. Justice R. BANUMATHI

Criminal Appeal No. 934 of 2002

Perumal,
S/o. Palani. .. Appellant/Accused.

-Vs-

State represented by The Inspector of Police,
Poolampatti Police Station,
Edapadi, Salem.
(Crime No. 717/2000). ..Respondent/Complainant.

Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure against conviction and sentence made in S. C.No. 340/2 001 dated 28-02-2002 on the file of I Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem.

For Appellant:- Mr. J. Shiva Ganesh.

For Respondent:- Mr.V.M.R. Rajendran, Addl. Public Prosecutor.

:JUDGEMENT
(Judgement of the Court was delivered by P. Sathasivam,J.)

Perumal, accused in Sessions Case No. 340 of 2001 on the file of Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem, questioning the conviction for offence under Section 302 I.P.C., and sentence of imprisonment for life and also fine of Rs.1,000/- in default R.I. for six months, has filed th e above appeal.

2. The case of the prosecution is briefly stated hereunder:
a) Deceased Muthan alias Muthu and his wife Kandhayi were residents of Ervadi Colony, Kuttapatti village. Their house situate in Arunthathiyar Street, Kallapalayam. On 25-7-2000 Rajammal(P.W.1), daughter of the deceased along with her husban d went to the house of her father, namely, the deceased

just to enquire them. When they reached the house of the deceased Muthan around 11 A.M. her father was sitting in a cot in front of his house. On seeing his daughters, namely, P.Ws.1 and 2, the deceased told them that a week ago when he tied a buffalo calf in a public place, near his house, the accused unleashed the calf by raising objection. At that time the accused, who is the neighbour of the deceased, was standing in front of his house, on hearing the above narration of the deceased, replied that "if you are a male, try to tie your calf again. For which, the deceased told him that he was explaining the incident to his daughters and did not come to him for quarrel. Not liked by the remarks of the deceased, the accused went inside his house, brought a knife from there and attempted to stab the deceased. On seeing this, P.W.1 tried to stop the accused. But the accused pushed her. Then P.W.1 raised an alarm. At that time, the accused stabbed with knife on the left chest of the deceased and pushed him on the cot. The deceased died on the spot. On hearing the cry of P.W.1, one Seerangan, husband of P.W.1, who was inside the

house of the deceased, came out from the house and other neighbours also rushed to the scene of occurrence. On seeing them, the accused sped away from the scene of occurrence with the knife.

b) P.W.1 went to Poolampatti Police Station at 2 P.M. on 25-7-20 00 and made a oral statement about the occurrence to P.W.1 0, Sub Inspector of Police, who recorded the same, and got the thumb impression of P.W.1 in it. Ex. P-1 is the complaint given by P.W.1 to Police. On the basis of Ex.P-1, he registered a case in Crime No. 717/2000 under Section 302 I.P.C. against the accused. He prepared Express First Information Report-Ex.P-8 and sent copies of the same to Judicial Magistrate's Court and other higher authorities for taking necessary action. P.W.10 supplied a copy of the first information report to P.W.1.

c) P.W.12-the then Inspector of Police, Edapadi Police Station, on receipt of the printed first information report, took up investigation in this case, proceeded to the scene of occurrence at 3-30 P.M., and prepared observation mahazar-Ex.P-4 in the presence of Velayudham and Thamaraiselvan. He drew a rough sketch- Ex.P-16. At about 4-30 P.M. he seized blood-stained earth-M.O.4; sample earth-M.O.5; blood-stained cot-M.O.6 under Ex.P-5 mahazar in the presence of witnesses. At 5 P.M. he conducted inquest on the body of the deceased in the presence of panchatdars and enquired Rajammal, Madhammal, Seerangan and Kaaveri and obtained their statements. Ex.P-17 is the inquest report. He sent the body to the Government Hospital, Edapadi for post-mortem through Head Constable- Ammasi with his requisition. He also enquired Ravi, Kandhayi, Pappa, Madhan, Kandasamy, Velayudham and Thamaraiselvan and obtained their statements. On the same date at 10 P.M. he arrested the accused at Edapadi bus-stand. The accused gave a voluntary statement, the admissible portion of which is Ex.P-6, which was recorded by P.W.12 in the presence of witnesses-Velayudham and Thamaraiselvan. Pursuant to the confessional statement-Ex.P-6, the accused took P.W.12 and produced a knife-M.O.1 from the roof of his house and white colour "langodu", which were recovered by P.W.12 under Ex.P-7 mahazar in the presence of witnesses. He arranged for sending the seized articles to Court and also for chemical examination. On 26-7-2000 he enquired one Ammasi and obtained his statement. He also enquired Dr.

Thiagarajan. After completing investigation and after getting opinion from the Assistant Public Prosecutor, he filed charge sheet on 8-9 -2000 for offences under Sections 441, 341 and 302 I.P.C.

3. The prosecution has examined 12 witnesses as P.Ws.1 and 12 and marked 17 documents as Exs. P-1 to P-17 and M.Os.1 to 9. When the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances available from the evidence of prosecution witnesses, he denied the offences and pleaded not guilty. He did not examine any witness on his side. The learned trial Judge by accepting the case of the prosecution, convicted him for the offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- i.d., to undergo Rigorous Imprisonment for six months.

4. Heard Mr. J. Shiva Ganesh, learned counsel for the appellant/accused and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for respondent.

5. The only point for consideration in this appeal is, whether the prosecution has established its case against the accused/ appellant beyond doubt; and whether the trial Court was right in convicting the accused for the offence under Section 302 I.P.C., and sentencing him to undergo imprisonment for life with fine of Rs.1 ,000/-?

6. The motive for the occurrence is a wordy quarrel that had taken place a week prior to the date of occurrence between the deceased and the accused regarding tying of buffalo calf in the public land. This was narrated by the deceased to his daughters-P. Ws.1 and 2 who were very well present at the scene of occurrence. P.W.5, a resident of Kallapalayam also explained the above incident of wordy quarrel between the deceased and the accused which had taken place a week ago prior to the date of occurrence relating to tying of buffalo calf. Similar allegation was made in the complaint-Ex.P-1 given by P.W.1 to the Sub Inspector of Police-P.W.10 of Poolampatti Police Station. There is no reason to disbelieve their version.

7. The scene of occurrence and the manner in which the accused murdered the deceased is explained by P.Ws.1 and 2, daughters of the deceased. It is not in dispute that the accused is a neighbour and he is none-else than the cousin brouther of the deceased. The occurrence took place at 11 A.M. on 25-7-2000. It is seen from the evidence of P.W.1 that when his deceased father was explaining the conduct of the accused in unleashing the buffalo calf which was tied in a public place, the accused heard the same and remarked him (deceased) as to why he had discussed the incident that had taken place a week ago. For the said remark, the deceased replied that he was discussing the same only with his daughters. On getting infuriated, the accused went inside his house, took a knife and stabbed him on the left side of his chest and pushed him on the wooden cot. The deceased died. Immediately, P.W.1 raised an alarm. This was witnessed by her sister-P.W.2, and her husband-P.W.3. It is also her case that immediately after the occurrence, the accused sped away from the spot with the knife. It was P.W.1 who made a complaint under Ex.P-1 to the police.

8. P.W.2, another daughter of the deceased, sister of P.W.1 has made a statement similar to that of P.W.1 regarding the manner of the occurrence. P.W.3, husband of P.W.1 who was inside the house, on hearing the noise, came out and saw the accused stabbing the deceased with M.O.1. According to him, when he attempted to catchhold of the accused, he ran away from the spot. He also noticed the deceased succumbing to the injuries. He also accompanied P.W.1 to the Police Station for giving complaint regarding the occurrence.

9. P.W.4-Kaveri who was standing at a distance of 50 feet from the scene of occurrence, has also stated that on hearing the noise of P.Ws.1 and 2, she saw the accused stabbing the deceased with M.O.1-knife. She also verified that the deceased died lying on the cot. Though she tried to catch hold of the accused, since the latter threatened him, she was not successful in her attempt. She was also enquired by the police.

10. P.W.7-Dr. Thiagarajan, who conducted post-mortem on the body of Muthan, opined that the death was due to stab injury on the left chest. In his opinion, he has stated that...

(TAMIL PORTION DELETED)

11. We have already referred to the fact that the Inspector of Police-P.W.12 after recovery of earth(M.O.4), coir cot(M.O.6), knife (M.O.1), cloth pieces (M.Os.7 and 8), shirt (M.O.9), arranged for sending the same to chemical examination. The report of the Forensic Science Laboratory-Ex.P-13 shows that those M.Os. contain human blood. As a matter of fact, coir cot-M.O.6, towel (M.O.8) and shirt (M.O.9) contain B Group.

12. The evidence of P.Ws.1 to 4, P.W.7-Doctor,who conducted post-mortem; Post-mortem certificate-Ex.P-3; observation mahazar-Ex.P-4; serological report- Ex.P-13 would clearly prove the case of the prosecution that the accused stabbed on the chest of the deceased with knife-M.O.1. After considering all the material aspects, the learned trial Judge rightly accepted the case of the prosecution and convicted the accused for the offence under Section 302 I.P.C. and awarded the sentence of life imprisonment with fine of Rs.1,000/-.

13. Learned counsel appearing for the appellant by pointing out the fact that there was only one stab injury on the deceased, and the deceased and the accused at the time of the occurrence were running 70 and 60 years respectively old, submitted that the sentence of life imprisonment may be reduced. We are unable to appreciate the said contention for the following reasons. We have already concluded that the prosecution has established its case beyond all reasonable doubts and it is the accused, who murdered the deceased. In this regard, it is relevant to refer a judgement of the Supreme Court in the case of Hukam Chand v. State of Haryana, reported in 2003 Supreme Court Cases (Cri) 69, wherein Their Lordships have held that infliction of single blow on vital part of the body is sufficient for conviction under Section 302 I.P.C. and Their Lordships rejected the plea for conversion of the conviction to that under Section 304 Part I. In the case on hand also, there is a single blow, however, the same is on the vital part of

the body, namely, left chest of the deceased. P.W.7Assistant Medical Officer, Governme nt Hospital, Edappadi, who conducted the postmortem, has specifically stated that the death was due to the said injury on the chest. He also recorded the same in his post-mortem certificate-Ex.P-3. In such a circumstance, though the accused had caused only a single injury, since the same is on the vital part of the body which resulted in the death of the deceased, as observed by the Supreme Court, the plea for conviction for offence under Section 304 Part I cannot be accepted. Equally, merely because the deceased was aged about 70 years at the time of the occurrence and the accused was 60 years, in view of the fact that there is clinching and acceptable evidence that it was the accused who caused the death of the deceased by cutting with M.O.1-knife, there cannot be any lesser sentence than that awarded by the trial Judge. Further, it is not in dispute that due to economic development and other facilities, the longevity of life span of an Indian citizen has considerably been raised; hence, it cannot be claimed that the deceased has gone to the final stage of his life. Life is a precious gift given by the God and no one has the right to take away the same even at the old age; accordingly, we reject the request of the learned counsel for the appellant for modification of the sentence.

14. In the light of what is stated above, we do not find any error or infirmity or valid ground for interference; accordingly, the appeal fails and the same is dismissed.

R.B.
Index :- Yes
Internet:- Yes

To:-

1) The I Additional Sessions Judge-cum-
Chief Judicial Magistrate, Salem.

2) The Principal Sessions Judge, Salem.

3) The Public Prosecutor, High Court, Madras.

4) The Inspector of Police, Poolampatti P.S.,
Edapadi,Salem.

5) The Superintendent, Central Prison, Coimbatore.

6) The District Collector, Salem.

7) The Director General of Police, Mylapore, Chennai-4.

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